SUPREME COURT OF THE UNITED STATES.

No. 63.

WM. H. McFARLAND, PLAINTIFF IN ERROR,

vs.

WM. M. GWIN, LATE MARSHAL, &c.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. GIDEON, printers.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, William H. McFarland, and James W. Pegram, and Horatio S. Eustis, are held and firmly bound unto William M. Gwin, late marshal of the southern district of Mississippi, in the just and full sum of two hundred dollars, lawful money of the United States, to be paid to the said William M. Gwin, late marshal as aforesaid, his lawful attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of March, A. D. one thousand eight hundred and forty-three.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1842, judgment was rendered by said court in favor of the said William M. Gwin, late marshal as aforesaid, against the said William H. McFarland, in the defence of a certain motion instituted in said court by said W. H. McFarland against said Gwin, for the sum of forty dollars 33⅓ costs; and the said William H. McFarland hath sued out a writ of error, from the Supreme Court of the United States, to reverse said judgment.

Now, if the said William H. McFarland shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment for costs, if he, the said William H. McFarland, plaintiff in error as aforesaid, shall fail to make his plea good, then, and in that case, this obligation to be void, otherwise to remain in full force and virtue.

Signed, WM. H. McFARLAND, [SEAL.]
J. W. PEGRAM, [SEAL.]
H. S. EUSTIS, [SEAL.]

Sealed and delivered in presence of—
ALEX. MONTGOMERY.

UNITED STATES OF AMERICA, }
Southern district of Mississippi: } Circuit court, U. S.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing is a true copy of the original bond filed in the case of W. H. McFarland *vs.* William M. Gwin, late marshal, &c., as the same now remains on file in my office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court this 9th day of August, A. D. 1843.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit
[SEAL.] court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between William H. McFarland, plaintiff, and William M. Gwin, late marshal of the southern district of Mississippi, defendant, a manifest error hath happened, to the great damage of the said William H. McFarland, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday in January, in
[SEAL.] the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the 67th.

Issued the 8th day of August, 1843.

W. H. BROWN, *Clerk.*

WILLIAM H. MCFARLAND
vs.
ELLIS P. PASSMORE.

Pleas before the honorable John McKinley and Samuel J. Gholson, judges of the circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, at a court held at Jackson, on the first Monday in May, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-seven, came William H. McFarland, by William R. T. Chaplain, his attorney, and ordered out of the clerk's office of the circuit court of the United States for the district of Mississippi, the following writ of summons ad respondendum against Ellis P. Passmore, in an action on the case, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Mississippi, sct:*

The President of the United States to the marshal of the Mississippi district, greeting:

We command you without delay to summon Ellis P. Passmore, a citizen of the State of Mississippi, that he be and appear before the circuit court of the United States to be held at the town of Jackson, in and for the district of Mississippi, on the 1st Monday of November next, to answer to William H. McFarland, a citizen of the State of Virginia, of a plea of trespass on the case to his damage fifteen thousand dollars, and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of
[L. S.] the Supreme Court of the United States, the 17th day of October, A. D. 1837, and of the Independence of the United States the 62d.

WM. BURNS, *Clk.*

Upon which writ, the marshal of the district aforesaid, by his deputy, made the following return, to wit:

"Summoned the within defendants personally, and gave him a copy, October 24th, 1837.

WM. M. GWIN, *Marshal,*
By his deputy, J. F. COOK."

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorney aforesaid, filed in the clerk's office of said court his declaration in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *Mississippi district.*

United States Circuit Court, Ninth Circuit, November term, 1837.

William H. McFarland, a citizen of the State of Virginia, by attorney, complains of Ellis P. Passmore, a citizen of the State of Mississippi, being in custody, &c., of a plea of trespass on the case, for that whereas the said defendant (together with a certain Hugh Sanders) heretofore, to wit, on the first day of March, in the year of our Lord eighteen hundred and thirty-six, at Vicksburg, to wit, at the district aforesaid, made his certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to certain persons described as Messrs. Leigh, Maddux & Co., New Orleans, to wit, in the State of Louisiana; and thereby then and there requested the said persons, described as Messrs. Leigh, Maddux & Co., twelve months after date of that his first of exchange (second of the same tenor and date unpaid) to pay a certain person described by the name of A. Leggett, or order, seven thousand six hundred and fifty dollars

value received, and then and there delivered the said bill of exchange to the said person described as A. Leggett, which said bill of exchange the said persons described by the name of Messrs. Leigh, Maddux & Co. (adopting the signature of Leigh, Maddux & Co.), afterwards, to wit, on the same day and year aforesaid, at New Orleans aforesaid, to wit, in the State of Louisiana, to wit, at the district aforesaid, accepted according to the tenor and effect of the said bill of exchange. And the said person described by the name of A. Leggett, to whom or to whose order the payment of the said sum of money in the said bill of exchange specified was to be made, after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at, to wit, the district aforesaid, (using the name and signature of A. Leggett) endorsed the said bill of exchange, and thereby then and there ordered and appointed the said sum of money therein specified to be paid to the said plaintiff, and then [and] there delivered the said bill of exchange so endorsed as aforesaid to the said plaintiff.

And the said plaintiff avers that afterwards, to wit, on the fourth day of March, in the year of our Lord eighteen hundred and thirty-seven, at the counting house of the said persons, described as Messrs. Leigh, Maddox & Co., in New Orleans aforesaid, the said bill of exchange was presented and shown for payment thereof according to the tenor and effect of the said bill of exchange, and payment of the said sum of money in the said bill of exchange specified was then and there duly required; but that neither the said persons described as Messrs. Leigh, Maddux & Co., nor any person or persons in their behalf, did or would, at the said time when the said bill of exchange was so presented and shewn for payment thereof as aforesaid, or at any other time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do; of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, had notice. By means whereof the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said bill of exchange specified; and being so liable he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at, to wit, the district aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said bill of exchange specified.

Nevertheless, the said defendant (although often requested so to do) has not paid the said sum of money abovementioned, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff he, the said defendant, hath hitherto wholly refused, and still doth refuse, so to do, to the damage of the said plaintiff of fifteen thousand dollars, and therefore he brings suit, &c.

WM. R. T. CHAPLAIN, *Plaintiff's Attorney.*

Copy of bill sued on.

$7,650 exch. VICKSBURG, 1*st March*, 1836.

Twelve months after date of this first of exchange (second of same tenor and date unpaid) pay to A. Leggett or order seven thousand six hundred and fifty dollars, value received, and charge the same to account.

Signed, ELLIS P. PASSMORE,
HUGH SAUNDERS."

LEIGH, MADDUX & Co.
"Messrs. LEIGH MADDUX & Co.,
New Orleans.
(Endorsed)—"A. LEGGETT."

And the said defendant, by his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the plaintiff has above thereof complained against him, and of this the defendant puts himself upon the country.

OGLESBY & DEARING,
For Defendant.

And the plaintiff doth the like.

CHAPLAIN, *for Plff.*

Afterwards, to wit, at the May term first aforesaid, that is to say, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, (until which time this cause was legally continued,) came the parties aforesaid by their attorneys aforesaid, and a jury being called came, to wit: C. D. Waggoner, George B. Adams, T. S. Tapley, John F. Price, William Ochiltree, S. M. Lockhart, Davis M. Fisher, H. R. Slatter, John Campbell, A. G. Shaw, John T. Hull and William Miller, who, being empannelled, tried and sworn to speak the truth upon the issue joined, say upon their oath they find for the plaintiff upon the issue joined, and assess his damages by reason of the premises aforesaid to nine thousand seven hundred and sixty-three dollars and ten cents.

Therefore, it is considered by the court that the plaintiff recover against the defendant the sum of nine thousand seven hundred and sixty-three dollars and ten cents for his damages aforesaid by the jurors in their verdict aforesaid assessed, and also his costs and charges by him about his suit in this behalf expended.

And the said defendant in mercy, &c.

And afterwards, to wit, on the 6th day of July, A. D. 1839, the following writ of fieri facias issued against the said defendant by virtue of the foregoing judgment, in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,

Southern district of Mississippi, sct.

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements of Ellis P. Passmore, late of your district, you cause to be made the sum of nine thousand seven hundred and sixty-three $\frac{10}{100}$ dollars, which William H. MacFarland, lately in our circuit court for the district aforesaid, has recovered against him, for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said Ellis P. Passmore to the said William H. MacFarland lately made, with interest on the said sum at 8 per centum per annum from the 14th day of May, 1839, until paid; also the sum of fifty-eight 16 $\frac{1}{100}$ dollars for costs by him about his suit in that behalf expended, whereof the said Ellis P. Passmore is convicted, as appears to us of record; and that you have the said moneys before the judges of our said court on the first Monday of November next, to render unto the said plaintiff for his damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States at Jackson, the [L. S.] first Monday of May, A. D. one thousand eight hundred and thirty-nine, and in the 63d year of the independence of the United States of America.

Issued the 6th day of July, 1839.

WM. BURNS, *Clk.*

Marshal's return.

"Levied this execution, November 1st, 1839, on the following property, viz: negro slaves Jim, Mary, Candia, Airy, Jenny and 2 children, William, Ellick, Ann, Arcy, Spencer, Isaac, Toney, *Cleb*, Dudley, Mary, 4 yoke of oxen, one wagon, 6 mules, 5 horses, 8 head of hogs, 36 head of cattle, 7 head of sheep, one set of blacksmith's tools, and farming utensils of all kinds; also on the following land to wit: S. $\frac{1}{2}$ E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, sect. 31, T. 10, R. 2 E.; S. $\frac{1}{2}$ same section, T. and R. N.; $\frac{1}{2}$ of sec. 6; S. W. $\frac{1}{4}$ of sect. 6; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ N. W. $\frac{1}{4}$, N. $\frac{1}{2}$ S. W. $\frac{1}{4}$ of sect. 5, in T. 9, R. 2 E., containing 1,070 acres. Said property not sold for want of time, November 4, 1839.

WM. M. GWIN, *Marshal*,
Per deputy, J. F. COOK.

And afterwards, to wit, on the 20th day of December, A. D. 1839, the following execution of venditioni exponas, issued in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss :

The President of the United States to the marshal of the southern district of Mississippi, greeting :

We command you, that you expose to sale those goods and chattels, lands and tenements, of Ellis P. Passmore, viz : negro slaves to wit: Jim, Mary, Camdia, Airy, Jenny, and two children, William, Ellick, Ann, Arcy, Spencer, Isaac, Toney, Caleb, Dudley, Mary, 4 yoke of oxen, one wagon, 6 mules, 5 horses, 8 head of hogs, 36 head of cattle, 7 head of sheep; and [a] set of blacksmith tools, and farming utensils of all kinds. Also, the following lands, to wit: S ½ E ½ of NE ¼ sec. 31 T. 10 R. 2 E, S ½ of same sec. T. and R., N ½ of sec. 6, SW ¼ of sec. 6, W ½ of NE ¼ and E ½ NW ¼ and N ½ SW ¼ of Sec. 5, in T. 9 R. 2 E, containing 1,070 acres, which according to our command you have taken, and which remain in your hands unsold, as you certified to the judges of our circuit court for the southern district of Mississippi, to satisfy William H. Macfarland the sum of nine thousand seven hundred and sixty-three $\frac{10}{100}$ dollars, with interest on the same at the rate of 8 per centum per annum, from the 14th day of May, 1839, until paid; and the sum of one hundred and sixty-five $\frac{71}{100}$, for costs and charges by him in that behalf expended, whereof the said Wm. H. Macfarland has recovered execution against the said Ellis P. Passmore, by virtue of a certain judgment in our said circuit court, at a court to be holden at Jackson, in and for the district aforesaid, on the first Monday of May next, to render to the said plaintiff; and have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Jackson, [L. S.] the first Monday of November, A. D. one thousand eight hundred and thirty-nine, and in the 64th year of the independence of the United States of America.

Issued the 20th day of December, 1839.

WM. BURNS, *cl'k.*

Marshal's return.

"The within named property was sold on the 27th day of January, 1840, and I received in payment therefor, on that day, the sum of nine thousand dollars in the post notes of the Mississippi Union Bank, which are herewith returned. Received, also, on the same day, the balance of the execution from the defendants, in the same kind of money, which is likewise herewith returned.

WM. M. GWIN, *Marshal,*
Per J. F. COOK, *deputy.*

Attorney's receipt.

May 22d, 1840. Received of Wm. M. Gwin, marshal, the sum of five hundred and fourteen $\frac{15}{100}$ dollars, being the amount of my

commissions, I having refused to receive the balance belonging to the plaintiff, as the same was tendered me by Mr. Gwin in Union Bank of Mississippi post notes, in which kind of money he *says* and returns that it wa[s] collected.

WM. R. T. CHAPLAIN, *pl'tffs att'y.*

Record of the motion arising out of the foregoing case, to wit:

WM. H. MACFARLAND,
vs.
WILLIAM M. GWIN.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that heretofore, to wit: at a circuit court of the United States held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, on the first Monday of November, in the year of our Lord one thousand eight hundred and forty-one, came William H. Macfarland, a citizen of the State of Virginia, by H. S. Eustis, his attorney, and moved the court for judgment in his favor against William M. Gwin, late marshal of the United States in and for the district aforesaid, in the sum of nine thousand seven hundred and sixty-three $\frac{10}{100}$ dollars, with interest thereon at the rate of eight per cent. per annum, from the fourteenth day of May, in the year 1839, until the twenty-seventh day of January, in the year 1840, also for interest upon said aggregate sum at the rate of thirty per cent. per annum, from the twenty-second day of May, 1840, until the same shall be paid; for that the said William M. Gwin on, to wit, the twenty-seventh day [of] January, in the year 1840, at, to wit, in the district aforesaid, being then marshal as aforesaid, by virtue of a certain writ of venditioni exponas, issued out of the honorable the circuit court of the United States of America, in and for the district aforesaid, on the twentieth day of December, in the year 1839, under the seal of said court directed to the marshal of the southern district of Mississippi, commanding him to expose for sale those goods and chattels, lands and tenements, of Ellis *G.* Passmore, viz: negro slaves, to wit, Jim, Mary, Candia, Airy, Jenny and two children, William, Ellick, Ann, Arcy, Spencer, Isaac, Toney, Caleb, Dudley, Mary, 4 yoke of oxen, one wagon, 6 mules, 5 horses, 8 head of hogs, 36 head of cattle, 7 head of sheep, and set of blacksmith's tools and farming utensils of all kinds; also the following lands, to wit: S $\frac{1}{2}$ E $\frac{1}{2}$ of NE $\frac{1}{4}$ sec. 31 T. 10 R. 2 E, S $\frac{1}{2}$ of same sec. T. and R., N $\frac{1}{2}$ of sec. 6, SW $\frac{1}{4}$ of sec. 6, W $\frac{1}{2}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of NW $\frac{1}{4}$, N $\frac{1}{2}$ of SW $\frac{1}{4}$ of sec. 5, T. 9, R. 2 E, containing 1070 acres, which, according to the command of said court, he the said marshal has

taken, and which remain in his hands unsold, as he had heretofore certified to the judges of said court, to satisfy William H. Macfarland, the sum of nine thousand seven hundred and sixty-three $\frac{10}{100}$ dollars, with interest on the same at the rate of 8 per centum per annum, from the 14th day of May, A. D. 1839, until paid, and the sum of one hundred and sixty-five $\frac{71}{100}$ dollars, for costs and charges by him in that behalf expended, whereof the said William H. Macfarland had recovered execution against the said Ellis P. Passmore, by virtue of a certain judgment in the said court; and that he have the said moneys before the judges of said court, at a court there to be holden at Jackson, in and for the district aforesaid, on the first Monday of May then next ensuing, to render to said plaintiff; which writ of venditioni exponas came into the hands of the said Wm. M. Gwin, late marshal as aforesaid, on the day of that is to say, before the said 27th day of January, in the year 1840, collected for the said William H. Macfarland, plaintiff as aforesaid, and received in payment on said venditioni exponas, the sum of ten thousand three hundred and thirty-nine dollars and seventeen cents, the amount of plaintiff's debt and interest, on the said 27th day of January, in the year 1840; which said sum so collected as aforesaid, was afterwards, to wit, on the twenty-second day of May, in the year 1840, by the said plaintiff William H. Macfarland, by his attorney in said case, William R. T. Chaplain, demanded of and from the said William M. Gwin, marshal as aforesaid, and payment of the same or any part thereof, was by him, the said marshal, then and there refused.

H. S. EUSTIS,
November 8, 1841. *Atty. for the plaintiff.*

To William M. Gwin, late marshal of the United States, in and for the southern district of Mississippi, greeting:

Please take notice, that on the Saturday next, being the second Saturday of the present term, or as soon thereafter as the same can be heard, I shall move the court for judgment against you, in manner and form as heretofore set forth.

Yours, H. S. EUSTIS,
Attorney for Wm. H. Macfarland.

Nov. 8, 1841.

I acknowledge notice of the above.

ROB. HUGHES.

Nov. 8, 1841.

I acknowledge notice of the above.

WM. M. GWIN.

Nov. 8, 1841.

And the said William M. Gwin, by his attorney, comes and defends, &c., and having heard said plaintiff's motion against him, says, that the same, and the causes set forth therein, in manner

and form as the plaintiff in said motion has set forth, and declared the same in said motion, are not sufficient in law to charge him thereon, and he is not bound by the law of the land to answer the same, and this he is ready to verify, &c., wherefore, &c.

And for cause of demurrer, the said defendant assigns and sets over the following, to wit:

1. Said motion is not sustainable against said defendant according to the rules of the common law.

2d. Said motion is not sustainable against said defendant under any act of Congress.

3d. The acts of the Legislature of the State of Mississippi, authorizing motions against sheriffs, &c., does not authorize a motion against the marshal of a district of the district courts of the United States.

4th. This court has no power to grant a judgment against the defendant on this motion, for the penalty prescribed by the statutes of Mississippi against sheriffs for failing to pay over money collected on execution.

5th. No motion will lie against the defendant since his removal as marshal.

6th. Said motion is in other respects informal and insufficient.

J. S. & WM. YERGER,
Attys. for Defendant.

Joinder in short by consent.

EUSTIS.

And now, at this time, to wit, at the said November term of the court aforesaid, to wit, on the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and forty-two, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys, and on motion of the defendant, by his attorneys, leave is given him to withdraw his said demurrer, filed as aforesaid, which is done accordingly. And thereupon, by consent of parties, by their attorneys, the said motion is submitted to the court for its judgment thereon, on the following case agreed, to wit:

Evidence for plaintiff. The venditioni and returns, to wit:

(See the venditioni exponas and returns before copied.)

And it was proved that the money was demanded on the 22d day of May, 1840; also, that at that date the Union post notes were at 40 per cent. discount.

The defendant proved, that on the demand he tendered the post notes of the Mississippi Union Bank, which were refused by the attorney of the plaintiff. He also proved, that from August, 1838, when the Mississippi Union Bank went into operation, until about the middle of February, 1840, the post notes of that bank constituted nearly the entire circulating medium of the State. That they had been treated as cash in all business transactions during that

time. That they were habitually and ordinarily received by the sheriffs throughout the State in satisfaction of executions, and in payment of property sold under them. That the marshal had been accustomed, during all that time, to collect the post notes of said bank upon executions; and that the attorneys of the court, and plaintiffs in executions, had always, without objection, received such notes from the marshal as money. That on the 27th day of January, 1840, the day of sale, the post notes of said bank were worth 5 or 6 per cent. less than specie, and were worth more than they had previously been. That about the middle of February, 1840, they suddenly depreciated in value, and continued to decline until the 22d May, 1840.

The above was all the evidence in the case.

H. S. EUSTIS,
W. YERGER.

Whereupon, after argument and mature deliberation thereon, the court is of opinion, that judgment should be entered on said case, agreed for the defendant.

Therefore it is considered by the court, that the said William M. Gwin, defendant, go hence without day, and recover of the said plaintiff, William H. Macfarland, his costs and charges by him about his defence in this behalf expended.

And thereupon, the plaintiff in said motion, by his attorney, tendered a bill of exceptions to the opinion of the court pronounced herein, which was received, signed, and sealed by the court, and ordered to be made a part of the record herein, to wit:

Be it remembered, that on this 28th day of November, 1842, at the present term of this court, came on to be heard the motion of William H. Macfarland against William M. Gwin, as marshal, for failing and refusing to pay over the money by him collected, by virtue of the fi. fa. in favor of William H. Macfarland against Ellis P. Passmore, and upon the trial of the said motion, the following evidence was given: (See the case agreed before copied.) Which evidence being heard and considered by the court, it is ordered, that said motion be overruled, and that defendant go hence, &c. To which opinion of the court, overruling said motion, the plaintiff, by his counsel, excepted, and tenders this his bill of exceptions, which he prays may be signed, sealed, and made a part of the record in this cause, which is done accordingly.

S. J. GHOLSON, [SEAL.]

UNITED STATES OF AMERICA,
Southern district of Mississippi: } *Circuit court U. S.*

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing eighteen pages, and what is contained on this page, contain a full, true, and complete transcript of the records of the judgments in the cases therein named, together with the proceed-

ings thereon, as the same now remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and af-
[SEAL.] fixed the seal of said court, this 28th day of March, A. D. 1843.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To William M. Gwin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein William H. McFarland is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern dis-
[SEAL.] trict of Mississippi, this 8th day of August, in the year of our Lord one thousand eight hundred and forty-three, and in the 68th year of the independence of the United States.

S. J. GHOLSON.

Executed on Wm. M. Gwin, and a *coppy* left with him.

ANDERSON MILLER,
Marshal S. D. Miss.

Marshal's fees—Mileage - - - -	$5 50
Executing notice and copy - -	2 50
	$8 00

VICKSBURG, 9*th August*, 1843.

A writ of error is awarded in this case, the petitioner executing a bond with security, in the penalty [of] two hundred dollars, conditioned according to law.

P. V. DANIEL,
Associate Justice of the Supreme Court of the U. States.

June 19*th*, 1843.

Filed 22d February, 1844.